

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	

PETITION FOR RECONSIDERATION

Pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the National Exchange Carrier Association, Inc. (NECA) submits this Petition for Reconsideration of the Commission's *Order on Reconsideration*, released February 15, 2002.¹ NECA requests reconsideration to allow non-local network portability (LNP) capable incumbent local exchange carriers (ILECs) to recover carrier-specific LNP-related costs through normal accounting and separations processes.

The Commission's initial cost recovery rules allowed LNP-capable ILECs the option to recover carrier-specific costs directly related to providing LNP through a monthly end-user LNP charge, but provided no mechanism for non-LNP capable ILECs to recover their LNP-related costs.²

The Commission's *Order on Reconsideration* now recognizes that non-LNP capable ILECs also have "long-term number portability shared costs and additional query

¹ Telephone Number Portability, CC Docket No. 95-116, *Memorandum Opinion and Order on Reconsideration and Order on Application for Review*, 17 FCC Rcd 2578 (2002) (*Order on Reconsideration*).

² See Telephone Number Portability, CC Docket No. 95-116, *Third Report and Order*, 13 FCC Rcd 11701 (1998) (*Third Report and Order*). NECA sought reconsideration on this point. See *NECA Expedited Petition for Reconsideration*, CC Docket No. 95-116, RM 8535 (July 29, 1998).

costs . . . [and] would be financially disadvantaged if they were not allowed recovery of these costs.”³ The Commission specifies the same type of cost recovery mechanism, an end user charge, as was selected for LNP-capable ILECs. It limited ILEC application of this charge to situations in which end users are “reasonably able to begin receiving the *direct benefits* of long-term number portability.”⁴

In order to fit these parameters, however, non-LNP capable ILECs outside the 100 largest metropolitan statistical areas (MSAs) must be located within an extended area service (EAS) calling plan that encompasses portions of one of the 100 largest MSA or other adjacent areas served by a number portability capable switch.⁵ The Commission maintains that non-LNP capable ILEC customers in these areas receive a direct benefit because an LNP-capable switch is used to complete their calls and because these customers would have difficulty completing the calls within the EAS area without access to the LNP-capable switch.⁶

This approach still leaves many ILECs without any ability to recover their ongoing LNP-related costs. ILECs not fitting the narrow criteria specified in the *Order on Reconsideration* continue to be deprived of recovery of these actual costs, which are mounting over time.⁷ These include, at a minimum, costs of supporting regional Number

³ See *Order on Reconsideration* at ¶ 51.

⁴ *Third Report and Order* at ¶ 142 (emphasis added).

⁵ See *Order on Reconsideration* at ¶ 53.

⁶ *Id.*

⁷ Out of 1095 study areas that participate in NECA Traffic Sensitive pool, 291 are located either entirely or partially, within the current top 100 MSAs. There are 804 participating

Portability Administration Centers (NPACs)⁸ as well as N-1 query costs for intraLATA toll calls, which are imposed on all non-LNP capable ILECs depending on calling arrangements in rural areas and varying intraLATA presubscription requirements.

These costs should be considered normal network operating costs and therefore recoverable via normal separations and access charge mechanisms. In its *Order on Reconsideration* in this proceeding, the Commission noted that the *Third Report and Order* does not allow recovery of long-term number portability costs (*i.e.*, database administration costs and N-1 query charges) through normal separations and access charge processes.⁹ Yet, in the same *Order*, the Commission determined that ILECs that have implemented LNP may recover *the very same costs* through separations and access charges after expiration of the five-year period for end-user charge recovery.¹⁰ Moreover, the Commission has permitted all rate-of-return (ROR) carriers to recover the costs of thousands block number pooling (TBNP) implementation in their interstate access charges “in the ordinary course,”¹¹ despite the fact that TBNP costs cover the

study areas, the majority of which do not have EAS arrangements, located entirely outside the top 100 MSAs.

⁸ The Commission has determined that section 251(e)(2) (47 U.S.C. § 251(e)(2)) requires that *all* telecommunications carriers support the ongoing maintenance of the LNPA. See *Third Report and Order* at ¶ 113.

⁹ See *Order on Reconsideration* at ¶ 50.

¹⁰ *Id.* at ¶ 87.

¹¹ See Number Resource Optimization, CC Docket No. 99-200, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Telephone Number Portability, CC Docket No. 95-116, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200*, 17 FCC Rcd 252 (2002) at ¶ 24.

same type of functions as LNP costs and are governed by the same statutory cost recovery provisions.

Such disparate treatment is unjustified. LNP administration costs and N-1 query costs incurred by non-LNP capable ILECs are normal network costs, not implementation costs. They are no different from the costs that will continue to be incurred by LNP capable ILECs after the five-year end-user recovery charge has expired. There is no reason why the Commission should permit access charge recovery of ongoing LNP-related after the five-year implementation period while prohibiting access charge recovery of the same costs prior to LNP implementation.

Concerns that allowing recovery of these costs in this manner would not be “competitively neutral”¹² are unfounded. Areas served by non-LNP capable ILECs are, by definition, areas that are not served by competitive carriers. Thus, no question of “competitive neutrality” arises when these costs are included in access charges. And, obviously, if the Act permits LNP-capable carriers to recover these costs in access charges following expiration of the five-year period for end-user recovery (when, presumably, competition will be well-established), the Act would also permit access charge recovery in areas not yet served by competitive carriers.

The Commission’s rationale for allowing incomplete recovery of these costs is apparently based on the idea that end users in non-LNP capable areas with EAS arrangements benefit from LNP implementation in ways that end users in other areas do not. Therefore, in the Commission’s view, the cost recovery problem could be “solved”

¹² The Commission has determined that section 251(e)(2) requires it to ensure that both the distribution and recovery of intrastate and interstate number portability costs occur on a competitively neutral basis. *See Third Report and Order* at ¶ 39.

by permitting carriers in these circumstances to assess end-user charges to recover long-term LNP costs.¹³

This rationale is strained. EAS does not permit customers in non-LNP capable areas to take advantage of local number portability – only the actual presence of competitors would permit these customers to “port” their numbers from one carrier to another. It is true, of course, that customers participating in EAS arrangements can complete calls to customers served by LNP-capable switches. But the same thing can be said for virtually any customer on the network. If the ability to complete calls to LNP-capable areas supports imposition of end-user charges in EAS areas, the same rationale would support imposition of end-user charges in virtually any area. Thus, at a minimum, the Commission should reconsider its decision to limit this recovery mechanism to areas served by EAS arrangements.

Rather than resort to universal end-user recovery of ongoing LNP costs, however, the Commission should reconsider its decision to prohibit non-LNP capable carriers from including their ongoing LNP costs in access charges. As things now stand, the Commission’s rules require a small subset of non-LNP capable carriers to recover ongoing LNP costs via end-user charges, while permitting LNP-capable carriers to recover the same costs via access charges upon expiration of the five-year period for end-user charge recovery. Non-LNP capable carriers outside of the 100 largest MSAs (and associated EAS areas) continue to have no mechanism for recovering these costs.¹⁴ The

¹³ See *Order on Reconsideration* at ¶ 53.

¹⁴ Since the Commission’s current rules do not require ILECs in the top 100 MSAs to implement LNP until they receive a specific request from another carrier (See 47 C.F.R. § 52.23 (b)(1)), non-LNP capable ILECs inside the top 100 MSAs are left without a cost recovery mechanism as well.

Commission should correct this unfair situation by acknowledging that ongoing LNP-related costs incurred by non-LNP capable ILECs are, in fact, normal network costs that can be recovered through separations and access charges procedures, in the same manner as post-implementation LNP costs and TBNP costs may be recovered by LNP-capable carriers.

Under this approach, LNP implementation costs would still be recovered through the end-user charge recovery mechanism prescribed by the Commission when LNP is implemented in a particular area. In these cases, customers can reasonably be said to receive the benefits of LNP. Following expiration of the five-year recovery period, carriers outside the 100 largest MSAs would resume recovery of ongoing costs via access charges, in the same manner as companies who have already completed the initial implementation period.

CONCLUSION

The Commission should reconsider its decision not to allow non-LNP capable ILECs to recover carrier-specific ongoing LNP-related costs through normal accounting and separations processes. It should, instead, permit consistent recovery of these costs by LNP-capable and non-LNP capable carriers alike.

Should the Commission continue to insist that non-LNP capable carriers recover these costs only through end-user charges, it should reconsider its decision to limit this recovery mechanism to carriers in EAS areas. As explained above, this illogical

approach results in non-recovery of these costs by carriers located outside of such arrangements. *All* carriers should be permitted to recover these costs in some manner.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: /s/ Richard A. Askoff
Richard A. Askoff
Its Attorney

Martha West
Senior Regulatory Manager

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80 South Jefferson Road
Whippany, New Jersey 07981
(973) 884-8000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition for Reconsideration was served this 15th day of July 2002, by electronic delivery and by first-class mail to the persons listed below.

By: /s/ Shawn O'Brien
Shawn O'Brien

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.,
TW-A325
Washington, D.C. 20554
(filed through ECFS)

Qualex International
Portals II
445 12th Street SW
CY-B402
Washington, D.C. 20554